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Negotiable Instruments—Signature in Representative Capacity—Admissibility of Parol Evidence.—Norman v. Beling

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If the payee has no standing to sue on any theory based on rights in the instrument he would then be obliged to rely exclusively on the original obligation. It would appear that this was the gravamen of the count alleging indebtedness "on an account stated,"[14] although the court construed it as an action on the checks themselves. Had the court regarded this claim as one arising from the original obligation, this would have put an immediate end to the case and effectively avoided the subsequent litigation devolving from this decision.

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Negotiable Instruments—Signature in Representative Capacity—Admissibility of Parol Evidence.—*Norman v. Beling.*[1]—Plaintiff, holder in due course of a series of promissory notes, sought to recover from the defendant who, with another, had signed the notes below the name of a corporation without giving any indication of representative capacity.

The form of the notes was as follows:

". . . After Date *We* Promise to Pay . . .

Teal Corporation
J. Harold Samar
Christopher A. Beling" .

The notes were a printed form, with "We" and "Teal Corporation" typed in and the signatures were handwritten. The trial court ruled that there existed a patent ambiguity on the face of the instruments and, on the basis of parol evidence which it admitted in order to resolve the ambiguity, found that the defendant had signed the note only in a representative capacity and was therefore not liable as a co-maker. The Superior Court, Appellate Division, reversed, holding that the instruments revealed unambiguously that defendant bound himself individually on the instruments.[2] The New Jersey Supreme Court reversed the Appellate Division and reinstated the judgment of the trial court. HELD: The signatures on each note created an ambiguity on the face of the instrument, since a reasonably prudent man would be unable to determine from the signatures, with any degree of certainty, the status of the individual signers and therefore parol evidence could be used to resolve the ambiguity.

Under the parol evidence rule as applied to negotiable instruments, when commercial paper has on its face an ambiguity apparent to a reasonably prudent man, proof of the facts and circumstances surrounding the execution of the instrument may be introduced to aid in its construction.[3] The courts

[14] Supra note 2.

[1] 33 N.J. 237, 163 A.2d 129 (1960).

[2] 58 N.J. Super. 575, 157 A.2d 17 (App. Div. 1959).

[3] Canton Provision Co. v. Chaney, 70 N.E.2d 687 (Ohio Ct. App. 1945); Germania Nat'l Bank v. Mariner, 129 Wis. 544, 109 N.W. 574 (1906); UCC § 3-403(2)(b) and Comment 3 thereto.

have experienced considerable difficulty in determining whether signatures such as those on the notes before the New Jersey court are ambiguous. Such a determination of ambiguity is a prerequisite to the introduction of parol evidence when plaintiff is a subsequent holder in due course[4] seeking to hold an individual signer liable on the instrument. This is in contrast to the situation where the plaintiff is the payee or one who has only succeeded to the rights of the payee, in which case the individual defendant may introduce evidence to show that the parties at the time of execution attached to the signature a meaning different from that which the law would ordinarily give (i.e., mutual mistake) or that there was a unilateral mistake with fraud on the part of the other party.[5]

On facts essentially similar to those in the instant case, some courts have agreed with New Jersey that such signatures are patently ambiguous and will admit parol evidence to assist in establishing the status of the individual signer.[6] Wisconsin[7] has reached the same result where the body of the note recited that the "corporation," instead of "we," promised to pay, and there is dicta to the same effect in decisions in other jurisdictions,[8] including the present New Jersey case.[9] On the other hand, the principal case indicates that the use of the word "we" in the body of the note does not necessarily mean that all persons whose names appear thereon are makers, since "we" is also commonly used to refer to the corporate aggregate.[10]

Many courts have held, contrary to the present case, that in such a situation an ambiguity is not created and therefore parol evidence is inadmissible.[11] The tenor of these decisions is that the signer who does not

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[4] The word "subsequent" is used here to avoid the problem of whether or not a payee may be a holder in due course. Cf. UCC § 3-302(2) and Comment 2 thereto.

[5] Exchange Bank v. Schultz, 167 Iowa 136, 149 N.W. 99 (1914); Farmers' and Merchants' Nat'l Bank v. Hoyt, 29 Okla. 772, 120 P. 264 (1911); Grange Nat'l Bank v. Conville, 8 Pa. D. & C.2d 616 (1956). A defendant may not introduce evidence of such mistake when a holder in due course is seeking to hold him liable; for mistake would not constitute a defense against such holder. UCC § 3-305(2); NIL § 57. Courts are somewhat more inclined to admit parol evidence in litigation between the original parties to the instrument than in suits brought by a holder in due course. Belmont Dairy Co. v. Thrasher, 124 Md. 320, 92 Atl. 776 (Ct. App. 1914); Canton Provision Co. v. Chaney, supra note 3. But cf. Betz v. Bank of Miami Beach, 95 So. 2d 891 (Fla. 1957); Coal River Collieries v. Eureka Coal and Wood Co., 144 Va. 263, 132 S.E. 337 (1920).

[6] Austin Nichols & Co. v. Gross, 98 Conn. 782, 120 Atl. 596 (1923); Belmont Dairy Co. v. Thrasher, supra note 5; Hoffstaedter v. Lichtenstein, 203 App. Div. 494, 196 N.Y. Supp. 577 (1922); Canton Provision Co. v. Chaney, supra note 3. The New Jersey court in the instant case relied heavily on these decisions, despite the fact that each of these involved an action by the payee, rather than by a holder in due course, a fact the New Jersey court recognized.

[7] Germania Nat'l Bank v. Mariner, supra note 3. In this case the plantiff was a holder in due course.

[8] Betz v. Bank of Miami Beach, supra note 5 (dicta); Murphy v. Riemann Furniture Mfg. Co., 183 Ore. 474, 193 P.2d 1000 (1948) (dicta).

[9] Supra note 1, at 132.

[10] Supra note 1, at 133.

[11] Schaeffle v. Nolan, 115 Cal. App. 2d 651, 252 P.2d 732 (Dist. Ct. App. 1953); Betz v. Bank of Miami Beach, supra note 5; Exchange Bank v. Schultz, supra note 5;

give explicit indication that he has signed in a representative capacity has placed his name upon the instrument in exactly the same manner as he would have had he intended to bind himself personally on the instrument as co-maker and that a reasonably prudent man in looking at the instrument would think such signer was individually bound. In addition, it would hamper the free flow of commercial paper to require investigation of the circumstances of execution whenever a note bore the signatures of both a corporation and individuals. Some of the courts have stated that to admit parol evidence would in fact be to create an ambiguity where on the face of the instrument there had been none.[12]

The Negotiable Instruments Law (NIL) contains no section directly bearing on the problem presented by this case. Section 20 comes the closest, stating that where an instrument contains, or where a person adds to his signature, words indicating that he signs for or on behalf of a principal, he is not liable on the instrument if he has duly been authorized.[13] It has been held that Section 20 merely provides an established method by which one signing a note in a representative capacity can escape personal liability through the addition of certain words to his signature,[14] that if he fails to use such words Section 20 isn't applicable,[15] and that Section 20 does not exclude the use of parol evidence to explain the character of an ambiguous signature.[16]

The Uniform Commercial Code (UCC) has rewritten Section 20 of the NIL. UCC Section 3-403(2)(b) states that an "authorized representative who signs his own name to an instrument, except as otherwise established between the immediate parties, is personally obligated if the instrument names the party represented but does not show that the representative signed in a representative capacity . . . ." Where the signatures were situated in a manner identical to those in the instant case, the Pennsylvania Court

Kraushaar v. Lloyd, 152 Misc. 269, 273 N.Y. Supp. 231 (App. Term 1934); Murphy v. Riemann Furniture Mfg. Co., supra note 8; Grange Nat'l Bank v. Conville, supra note 5, decided under UCC; Lazarov v. Klyce, 195 Tenn. 27, 255 S.W.2d 11 (1953); Coal River Collieries v. Eureka Coal and Wood Co., supra note 5; Toon v. McCaw, 74 Wash. 335, 133 Pac. 469 (1913).

12 Lazarov v. Klyce, supra note 11; Toon v. McCaw, supra note 11.

13 Where the names of the intended makers of the note appeared in the promissory section of the body of a note, Massachusetts has held that any additional persons signing in the place where makers usually sign will be considered to be indorsers, applying NIL § 17(6), which says that when "a signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign, he is deemed to be an indorser." (This section has been taken into the UCC as § 3-402). La Caisse Populaire Credit Union v. Cross, 293 Mass. 190, 199 N.E. 548 (1936). This decision has been considered by at least two other jurisdictions and rejected on the ground that it does not apply to a situation such as that in the present case where the signer definitely affixed his signature as a maker and the issue is only whether he did so in a representative or an individual capacity. Schaeffle v. Nolan, supra note 11; Betz v. Bank of Miami Beach, supra note 5; Germania Bank v. Mariner, supra note 3.

14 Betz v. Bank of Miami Beach, supra note 5.

15 Phelps v. Weber, 84 N.J.L. 630, 87 Atl. 469 (1913).

16 Phelps v. Weber, supra note 15; Canton Provision Co. v. Chaney, supra note 3.

of Common Pleas construed this section as imposing liability on the individual signer since the instrument failed to clearly show that he signed only on behalf of another named on the paper.[17]

The New Jersey Legislature, which is currently considering adoption of the UCC, has established a Commission to study the Code. In its report to the Legislature, the Commission referred to the "unfortunate rule" in New Jersey whereby parol evidence could be used to exonerate the agent, even in cases where a holder in due course had acquired the instrument, and said that such rule had been reversed by the Appellate Division in the present case.[18] (The New Jersey Supreme Court's reversal of the Appellate Division had not yet been announced.)

In any event, skillful execution by an agent or other representative intending to bind only his principal, should follow the illustration contained in Comment 3(c) to UCC Section 3-403: "Peter Pringle, by Arthur Adams, Agent." It might also be advisable to use the name of the intended maker, rather than the customary "we," in the promissory section of the body of the instrument. With these safeguards, non-liability of the authorized representative will be assured, regardless of the jurisdiction.

ROBERT J. ROBERTORY

Sales—Written Warranties Received Subsequent to Consummation of Sale—Rights of Buyer Unaffected.—*Sensabaugh v. Morgan Brothers Farm Supply*.[1]—Defendant-contractor purchased a bulldozer and loader from plaintiff, authorized dealer of J. I. Case Company, and signed sales contracts which contained no references to warranties. Upon subsequent delivery of the machines, defendant received manuals of instructions, each containing a warranty and warranty-disclaimer clause printed on the back cover. The clause limited J. I. Case's liability to a computable period of time and disclaimed the existence of any other warranties "express, implied or statutory." The manuals were not filled out or signed, nor did either identify any particular purchase or machine. Plaintiff-dealer brought suit for balance of purchase price of the two machines. Defendant-purchaser, who had experienced considerable mechanical difficulty with the machines, counterclaimed for breach of implied warranty of merchantability. The trial court held that the defendant-purchaser was bound and limited by the express warranty-disclaimer on the back cover of the manual. On appeal, the Court of Appeals of Maryland reversed. HELD: the mere delivery of a printed and unexecuted warranty-disclaimer form after the sale has been consummated does not bind the parties. The case was remanded for a determination of

[17] Grange Nat'l Bank v. Conville, supra note 11.

[18] Report of the (New Jersey Legislative) Commission to Study and Report Upon the Uniform Commercial Code 284 (1960).

[1] 165 A.2d 914 (Md. 1960).